

Advisory Opinion

IECDB AO 2005-12

August 15, 2005

Marvin L. Tooman, Ed.D.
1515 S. Lakeview Drive
West Des Moines, Iowa 50266-5600

Dear Dr. Tooman:

This opinion is in response to your letter of July 21, 2005, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the Division Administrator for the Health Facilities Division of the Department of Inspection and Appeals (DIA). You advise us that you will be leaving state government to accept a position as the Executive Director of the Iowa Association of Community Providers. A major part of your new duties will require you to lobby the General Assembly and the Department of Human Services (DHS).

You further advise us that you are currently not a registered lobbyist on behalf of DIA and that you have had limited contacts with other state agencies, especially with DHS. You acknowledge that a 28E agreement currently exists between DIA and DHS, but that the agreement was in existence prior to your employment with DIA and you have had no regular contact with DHS in the administration of the agreement.

QUESTION:

Is it permissible for you to accept employment with the Iowa Association of Community Providers that will include lobbying activities after terminating employment with the Department of Inspections and Appeals?

OPINION:

Two sections of the state ethics laws in Iowa Code chapter 68B impose two-year limitations on the ability of state officials and state employees to accept post state employment.

As you are going to be engaged in lobbying activities, Iowa Code section 68B.5A applies to your question. The Board first finds that you are the “head of a major subunit of a department.” Thus, subsection (5) specifically applies to your question. That subsection states:

“The head of a major subunit of a department or independent state agency, full-time employee of an office of a statewide elected official, or a legislative employee whose position involves a substantial exercise of administrative discretion or the expenditure of public funds, shall not, within two years after termination of employment, become a lobbyist before the agency in which the person was employed or before state agencies or officials or employees with whom the person had substantial and regular contact as part of the person's former duties.”

Thus, you would be prohibited from lobbying DIA for two years after leaving state government. You would also be prohibited from lobbying any state agencies, officials, or employees that you had “substantial and regular contact” as part of your duties with DIA.¹

Based on the information you provided to the Board, we do not believe that you had “substantial and regular contact” with the General Assembly or DHS while employed with DIA. Therefore, you could lobby the General Assembly and DHS in the next two years without violating Iowa Code section 68B.5A.

Iowa Code section 68B.7 also limits your ability to accept post state employment for two years. That section, in pertinent part, states:

“A person who has served as an official, state employee of a state agency, member of the general assembly, or legislative employee shall not within a period of two years after the termination of such service or employment appear before the agency or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and personally participated during the period of service or employment.”

In applying the language of this section you would be prohibited from appearing in front of DIA or accepting compensation for any services rendered on behalf of the Iowa Association of Community Providers if the compensation was in relation to any case, proceeding, or application that you participated in during your duties with DIA.

It does not appear from your letter that you will be appearing before DIA. The Board is unable to determine if you participated during your time with DIA in any case, proceeding, or application that the Iowa Association of Community Providers would have also been involved. In your conversation with the Board's Executive Director/Legal Counsel, you stated that you had not done so. If this is the case, then this section should not prohibit you from accepting employment with the Iowa Association of Community Providers.

In closing, the Board notes that its determinations that Iowa Code sections 68B.5A and 68B.7 do not prohibit you from accepting employment with the Iowa Association of Community Providers within two years of terminating employment with DIA is based on your letter to the Board and your conversation with the Board's Executive Director/Legal Counsel. If there is additional information that would impact the Board's determinations, you should submit an additional opinion request.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ See Iowa Code sections 68B.2(1), 68B.2(2), 68B.2(17), and 68B.2(25) for the definitions of "agency," "state agency," "official," and "state employee."